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March 26, 2010

The Honorable Garrett E. Brown, Jr.
United States District Court
Federal Building and U.S. Courthouse, Room 4050
Trenton, NJ 08608
E-FILED (COURTESY COPY TO FOLLOW)

Re: Boswell, Michael v. City of New Brunswick
Our File No.: 5534778 - SO
Docket No.: 3:08-cv-5098(GEB-LHG)

Dear Judge Brown:

Please be advised that this office represents the Defendants, City of New Brunswick, the New Brunswick Police Department and Officer Feaster, in connection with the above captioned matter. The New Brunswick Defendants filed a motion for summary judgment, which is returnable on April 5, 2010. Please accept this letter memorandum in lieu of more formal response to opposition to said motion submitted by Plaintiff's counsel.

As to the Monell claim against the City of New Brunswick[1], Plaintiff is alleging a failure to train. To establish liability against a municipal defendant under Section 1983 for an alleged failure to train, a Plaintiff must show that the Defendant "failed to train its employees in deliberate indifference to the potential for violation of the constitutional rights of those with whom the employee came into contact." Kadetsky v. Egg Harbor Twp Bd. of Educ., 164 F. Supp. 2d. 425, 432

[1] Plaintiff's counsel apparently concedes that they cannot maintain the claims against the New Brunswick Police Department (Pb 27) and, as such, the claims against the New Brunswick Police Department should be dismissed.

(D.N.J. 2001). In City of Canton Ohio v. Harris, 489 U.S. 378, 389-90 (1989), the United States Supreme Court held:

> Monell's rule that a city is not liable under §1983 unless a municipal policy causes a constitutional deprivation will not be satisfied by merely alleging that the existing training program for a class of employees, such as police officers, represents a policy for which the city is responsible. That much may be true. The issue in a case like this one, however, is whether that training program is adequate; and if it is not, the question becomes whether such inadequate training can justifiably be said to represent "city policy".

To maintain such a "difficult" claim of failure to train,

> [a] plaintiff must show that a reasonable municipal policy maker had contemporaneous knowledge of the offending occurrence or knowledge of a pattern of prior incidents or similar violations of constitutional rights and failed to take adequate measures to ensure the particular right in question or otherwise communicated a message of approval to the offending subordinates.

Garcia v. County of Bucks Co. 155 F. Supp.2d 259, 268 (E.D. Pa. 2001)(*citing* City of Canton, 489 U.S. at 390); See also Montgomery v. De Simone, 159 F.3d 120, 127 (3d Cir. N.J. 1998); Bonenberger v. Plymouth Twp., 132 F. 3d. 20, 25 (3d. Cir. 1997); Reitz v. County of Bucks, 125 F.3d 139, 145 (3d Cir. 1997); Simmons v. City of Philadelphia, 947 F. 2d 1042, 1059-60 (3d Cir. 1991), *cert. denied* 503 U.S. 985 (1992); Palma v. Atlantic County, 53 F. Supp. 2d 743, 761 (D.N.J. 1999). Furthermore, any failure to train, of course, must also cause the violation about which Plaintiff complains. Garcia, 155 F. Supp. 2d at 268 (citing Jones v. City of Chicago, 787 F. Supp. 2d 200, 205 (7th Cir. 1986)); Fulkerson v. City of Lancaster, 801 F. Supp. 2d 1476, 1483 (E.D.Pa. 1992), aff'd 993 F.3d 876 (3d Cir. 1993).

In short, Plaintiffs must do more than: 1) present "evidence of the shortcomings of an individual [police officer], 2) prove that an otherwise sound training program occasionally was negligently administered; or 3) showing, without more, that better training would have enabled an officer to avoid the injury causing conduct". Simmons, 947 F. 2d. at 1060 (citing City of Canton, 489 U.S. at 390). "Only where a failure to train reflects a 'deliberate' or 'conscious' choice by a municipality- a 'policy' as defined by our prior cases-can a city be liable for such failure under §1983". Simmons, 947 F. 2d. at 1060. Plaintiff must show that a Constitutional violation has occurred, Woloszyn v. County of Lawrence, 396 F. 3d. 314 (3d. Cir. 2005), that the City was deliberately indifferent by knowing that there was a pattern of similar Constitutional violations, Carter v. City of Philadelphia, 181 F. 3d. 339, 357 (3d. Cir. 1999), and that the City's failure to train was the "moving force" behind the injury alleged. Canton, 489 U.S. at 389; Board of County Commissioners of Bryan County v. Brown, 117 S. Ct. 1382, 1388 (1997).

In this instance, Plaintiff contends that the City failed to provide training on how to identify an intoxicated or homeless person and further that no SOPs existed as to how to handle an intoxicated individual. However, Plaintiff cannot prove that New Brunswick did not thoroughly and adequately train their police officers much less that any inadequate training led to the field inquiry of Mr. Boswell and Officer Feaster's interaction with him. It is undisputed by Plaintiff that Officer Feaster was well trained, first attending a State certified Police Academy, then being certified as a Police Officer by the State of New Jersey, and thereafter attending training provided by or on behalf of the City of New Brunswick. Further, Officer Feaster had 26 years of experience, specifically in patrol. New Brunswick is an urban district populated with residents, private and governmental employees, homeless, criminals, and college students. Experience, for over 26 years, in the City of New Brunswick, has involved Officer Feaster in DWI stops, breaking up college parties, interacting with intoxicated individuals, interacting with homeless individuals and interacting with individuals who have drug related and/or mental issues. In short, Officer Feaster, working in an inner city has "seen it all". The law is clear that police officers may rely upon their "own experience and specialized training to make inferences from and deductions about the cumulative information available to them, that might well elude an untrained person". United States v. Arizu, 534 U.S. 266, 273 (2000). Plaintiff's singular allegation that more training would have assisted Officer Feaster in recognizing the purported signs of intoxication in Mr. Boswell is not enough. Plaintiff's assertion ignores all of the training and experience that Officer Feaster possesses and brought to bear during his interaction with Mr. Boswell. Further, Plaintiff has failed to establish that any other police officer would have been able to recognize the alleged signs of intoxication in Mr. Boswell. Simply, any allegation by Plaintiff that a "particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the City." Canton, at 1206.

Even had Mr. Boswell displayed obvious signs of intoxication, the law requires intervention only when that person is so intoxicated as to be incapacitated. N.J.S.A. 26:2B-16. Indeed, then Deputy Chief Mangarella testified concerning this statute in response to Plaintiff's counsel's inquiry concerning SOPs and policies. (See Deposition of Mangarella, at Exhibit K, attached to Defendant's moving papers, at 26/17-28/7 and Exhibit A, attached to Plaintiff's opposition papers, at 25/13-24.) As such, Plaintiff's complaint that no standards existed on how to "handle" intoxicated persons is a non-issue as it has been addressed by the New Jersey Legislature. Further, Plaintiff has failed to provide this Court with any other instances, which would be sufficient to establish a pattern or practice on the part of the City of New Brunswick.

Similarly, whether Mr. Boswell was homeless is also a non-issue. It is undisputed that Officer Feaster received a identification card from Mr. Boswell, identifying an address. Officer Feaster has averred that he was unaware that the address was not a residence. Similarly, Officer

Barber was unaware that the address provided by Mr. Boswell to Officer Feaster was not a residence. (See Exhibit B, attached hereto, deposition of Barber, at 56/6-25). The only reason that Officer Barber set forth in the police report that Mr. Boswell was homeless, was based upon information received from Mr. Boswell's brother. (See Exhibit B, attached hereto, deposition of Barber, at 53/16-22). Whether Mr. Boswell was homeless or not, it remains clear that Officer Feaster had an objective belief, based upon the card presented by Mr. Boswell, that Mr. Boswell had a residence. Further, Plaintiff has failed to establish a pattern or practice by New Brunswick's officers in addressing the homeless population.

In short, Plaintiff has failed to: 1) offer any evidence indicating either deliberate indifference or inadequate training procedures; 2) allege or show any pattern of prior incidents of similar constitutional violations; or 3) demonstrate that, even assuming there was a failure to adequately train, that such failure actually caused the constitutional violations Plaintiff alleges. Importantly, Plaintiff's expert has not opined that the City of New Brunswick inadequately trained Officer Feaster. Here, as in Reitz, the "record...is critically deficient of evidence on which a jury reasonably could... base its conclusion that [the City of New Brunswick] was deliberately indifferent to the need to train [Officer Feaster] and that this failure to train was the actual cause of the Plaintiff's injuries". Reitz, 125 F. 3d. at 145.

As to the liability of Officer Feaster, Plaintiff attempts to create a issue of material fact concerning whether Mr. Boswell was visibly intoxicated and as such, whether Officer Feaster should have observed those signs and symptoms of intoxication and removed Mr. Boswell from Boyd Park. First, it is uncontroverted that other than Officer Feaster and Mr. Boswell, who no longer can recall the incident, there were no fact witnesses to the exchange between Officer Feaster and Mr. Boswell.

As such, Officer Feaster's sworn testimony concerning his observations of Mr. Boswell remains undisputed. It was Officer Feaster's sworn testimony that Mr. Boswell understood Officer Feaster, was cooperative, responded immediately and appropriately to Officer Feaster and was clear and coherent in his speech[2]. Mr. Boswell's physical coordination, in sitting on the bench and in walking away from Officer Feaster, was controlled and balanced. It is also uncontroverted that Officer Feaster did not observe Mr. Boswell drinking from the quart bottle of beer, which was later found underneath the picnic bench. As such, Officer Feaster made sufficient observations of Plaintiff and made a determination that Mr. Boswell was not intoxicated. Further, Plaintiff has failed to present one witness who observed Mr. Boswell prior to the accident and can testify that he displayed visible signs of intoxication.

Rather, Plaintiff relies solely upon the opinions of his expert, Mr. Saferstein, in an attempt to establish that Plaintiff would have displayed visible signs and symptoms of intoxication. However, Mr. Saferstein, since he did not take into account Plaintiff's history with alcohol, bases his opinions on a "typical" person, who has not built up a tolerance and is able to "mask" signs of alcohol, such as from a loved one, co-worker, or even a trained police officer. In short, if Mr. Boswell was a typical individual who had such a high Blood Alcohol content, he would have been so obviously drunk, that anyone, including the untrained, would have been aware that he was intoxicated. However, Mr. Boswell was a functioning alcoholic. Thus, while neither Mr. Saferstein, or Mr. Lage for that matter, took into account Plaintiff's tolerance to alcohol in rendering their opinions, Dr. Pandina did. As set forth in his report, Dr. Pandina has opined that based upon Mr. Boswell's extensive history with alcohol, "it is unlikely that the subject [meaning Mr. Boswell] exhibited clear signs of intoxication and would not have presented himself in an incapacitated state requiring medical attention and/or supervision indicating that he was incapacitated and/or in need of medical attention and/or supervision at the time he was confronted by Officer Feaster at approximately 1:45 am". (See Exhibit U, Pandina report, attached to Defendants' moving papers). Plaintiff's counsel even admits that a person, such as Mr. Boswell, who has a high tolerance for alcohol could have exhibited no signs and symptoms of intoxication, consistent with the testimony of Officer Feaster and the opinions of Dr. Pandina. (Pb.19-20, para. 56). Thus, there is no real issue of material fact relative to the signs and symptoms of intoxication of Mr. Boswell, as portrayed during his encounter with Officer Feaster in Boyd Park on September 4, 2005.

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[2] Plaintiff attempts to make this an issue of fact by maintaining that Officer Feaster could not understand what Mr. Boswell was saying. (Pb26). However, as set forth in Defendants' statement of facts as well as Plaintiff's statement of facts (Pb10, para. 33, 38), the only time that Officer Feaster could not understand Mr. Boswell was when Mr. Boswell was too far away to be understood, as he was walking away. Thus, there is no issue of fact concerning Officer Feaster's observations.

Further, Mr. Saferstein's opinion, alone, does not create a genuine issue of fact. Callahan v. A.E.V. Inc, 182 F. 3d. 237, 256 (3d. Cir. 1999); Medina v. Cram, 252 F. 3d. 1124, 1133 (10th Cir. 2001) (citations omitted); Blain v. Township of Radnor, 167 Fed. Appx. 330 (3d. Cir. 2006). As indicated, Mr. Saferstein fails to apply his theories and conclusions to the particular individual's actions at issue in this case. Second, Mr. Saferstein's opinions ignore the uncontroverted facts, that being Officer Feaster's observations. DeMerrell v. City of Cheboygan, 206 Fed. Appx. 418, 426-27 (6th Cir. 2006). As such, Plaintiff's reliance on Mr. Saferstein's opinions cannot establish that Mr. Boswell's injuries were foreseeable, the first element of the State Created Danger Doctrine, thereby defeating Defendants' motion for summary judgment.

As more fully set forth in Defendants' moving papers, Plaintiff cannot substantiate any element of the State Created Danger Doctrine. Despite Plaintiff's repeated contention that Mr.

Boswell had a Constitutional right to "personal security, bodily integrity and well being" (Pb29), the United States Supreme Court in DeShaney v. Winnebago County Dep't of Social Serv., 489 U.S. 189, 195 (1989), emphasized that there is no affirmative right to governmental protections under the Due Process Clause of the Fourteenth Amendment. In special exceptions, only, does the State have an affirmative obligation to protect an individual from the acts of third parties. In an attempt to fall within this limited exception, Plaintiff contends that either a) Officer Feaster failed to act by failing to remove Mr. Boswell from the park, based upon a hypothetical display of symptoms of intoxication (Pb47), or conversely, b) Officer Feaster did act by affirmatively ordering Mr. Boswell to leave the park by means of a six (6) lane highway (Pb 46). Plaintiff acknowledges that liability cannot be predicated on a failure to act, Ye v. United States, 484 F. 3d. 634, 638 (3d. Cir. 2007), and as such, the only "issue" is whether Officer Feaster's actions in directing Mr. Boswell out of the park are sufficient to impose liability. First, Plaintiff contends, without any substantiation, that there are only two (2) ways out of Boyd Park: to swim the canal or cross a six lane highway. (Pb6 at #15). Plaintiff conveniently ignores the fact that Mr. Boswell could have exited the park, similar to the manner he entered the park, by means of: (1) New Street; (2) a covered walkway; (3) by crossing Rte. 18 (the aforementioned six lane highway) at the intersection of Commercial Ave. where a crosswalk and traffic signal existed; or (4) by swimming in the river. (See Exhibit A, attached hereto, photographs depicting Boyd Park in 2005). Clearly, it was Mr. Boswell's choice as to how to exit Boyd Park. Similarly, it was Mr. Boswell's choice to use Rte. 18 and not use New Street or the covered footbridge which allows pedestrians to safely cross above Rte. 18. It was Mr. Boswell's choice to cross a six (6) lane highway without using the crosswalk, with oncoming traffic, and against the traffic light. While Plaintiff would wish the Court to believe that it was Mr. Boswell's intoxication which compelled him to cross Rte. 18 at such a time, it could just as well have been other reasons, such as boredom, which reasons will never be established by conclusive proofs, given Mr. Boswell's inability to recall that evening. Further, ordering someone to leave a park cannot, in and of itself, be the cause of this motor vehicle accident. In addition to Mr. Boswell's own actions, events subsequent to Officer Feaster's interaction with Mr. Boswell are the cause of Mr. Boswell's injuries. As Plaintiff's counsel advised this Court, Mr. Eoon and Ms. Byrnes had "ample time, distance and opportunity to avoid and prevent the collision with Plaintiff...". (Plaintiff's opposition to Byrnes motion for summary judgment, Dkt. No. 26 at Pb6 at #17 and PB 17 and Plaintiff's opposition to Eoon's motion for summary judgment, Dkt. No. 34 at Pb 22). As such, Plaintiff cannot establish the third and fourth elements of the State Created Danger Doctrine.

Further, Plaintiff cannot establish that ordering Mr. Boswell from the park was egregious conduct, or performed with an improper or malicious motive to harm Mr. Boswell. Accordingly, the second element of the State Created Danger Doctrine remains unsatisfied. Only the "exercise of impermissible judicial hindsight", Colburn v. Upper Darby Township, 946 F. 2d. 1017 (3d. Cir. 1991), could justify holding Officer Feaster responsible for Mr. Boswell's accident. See also Graham v. Connor, 109 S.Ct 1865, 1872 (1989 (the objective reasonableness standard must be evaluated with respect to the particular circumstances "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight").

As such, Plaintiff has not presented sufficient evidence to show that a jury could conclude that Officer Feaster, by his conduct, violated Mr. Boswell's Constitutional rights, or that Officer Feaster's conduct was the cause of Mr. Boswell's injuries. Further, Officer Feaster, at the very least, is entitled to qualified immunity. Clearly, a reasonable police officer would not have known that by directing someone to leave a park, after issuing them an ordinance violation for being in a park after hours, violated a clearly established Constitutional right. Further, according to Officer Feaster, the only individual who could possibly know, Mr. Boswell presented with no signs of intoxication, and certainly did not appear incapacitated, sufficient to trigger Officer Feaster's caretaking role or requiring him to act in accordance with N.J.S.A. 26:2B-16. Had Mr. Boswell exhibited signs of intoxication to the point of incapacitation, then by statute, Officer Feaster would have been required to bring Mr. Boswell to an intoxication treatment center. Had he done so, he would have been immune from criminal or civil liability. N.J.S.A. 26:2B-16. While the statutory immunity is not available in this situation, Officer Feaster is entitled to qualified immunity, as his actions, when faced with an individual who had clear and coherent speech, coordinated movements, the ability to respond appropriately, and did not appear to be a danger to himself or others, were lawful.

Finally, as to the Tort Claims immunities to Plaintiff's state law claims, the New Brunswick Defendants have set forth immunities under N.J.S.A. 59:3-3, 59:3-5, and 59:3-2(b). Plaintiff does not oppose the immunities set forth in N.J.S.A. 59:3-5 or 59:3-2(b). (Pb57-58). It is clear that Officer Feaster, had he believed that Mr. Boswell was intoxicated, would have been required to follow N.J.S.A. 26:2B-16. Standing five (5) feet from Mr. Boswell for a substantial period of time, Officer Feaster was able to make observations of Mr. Boswell. These observations, based upon Mr. Boswell's actions, led Officer Feaster to conclude that Mr. Boswell was not intoxicated, not in need of any assistance, or a danger to himself or others. Officer Feaster, thereafter, continued to make observations of Mr. Boswell after he got up from the picnic area and began to walk away. Again, there was nothing in Mr. Boswell's gait or actions which gave Officer Feaster pause. Each of these observations formed the basis for Officer Feaster's conclusions. These conclusions, based upon years of experience and police training, were based upon Officer Feaster's judgment and as such, are discretionary. Despite Plaintiff's attempt to distinguish the facts in Morey v. Palmer, 232 N.J. Super. 144, 154 (App. Div. 1989), it is the principle cited by the Court which is applicable: the officer's judgment in determining that the pedestrian was not so intoxicated as to be incapacitated and require assistance pursuant to N.J.S.A. 26:2B-16, was discretionary and was an act in the enforcement of the law, sufficient to cloak him with the immunity of N.J.S.A. 59:3-3. Plaintiff's reference to N.J.S.A. 59:5-4 is also appropriate, given that the allegation against Officer Feaster is that he failed to protect Mr. Boswell from harm. As such, Officer Feaster would also be entitled to that immunity from Plaintiff's state law claims.

For the foregoing reasons, it is respectfully requested, based upon Plaintiff's concession, that summary judgment be granted as to the New Brunswick Police Department. Further, given the arguments contained in this reply, as well as the Defendants' moving papers, it is respectfully requested that summary judgment be granted, on all claims, as to the City of New Brunswick and Officer Feaster.

Respectfully submitted,

SUSAN K. O'CONNOR

SO:rk
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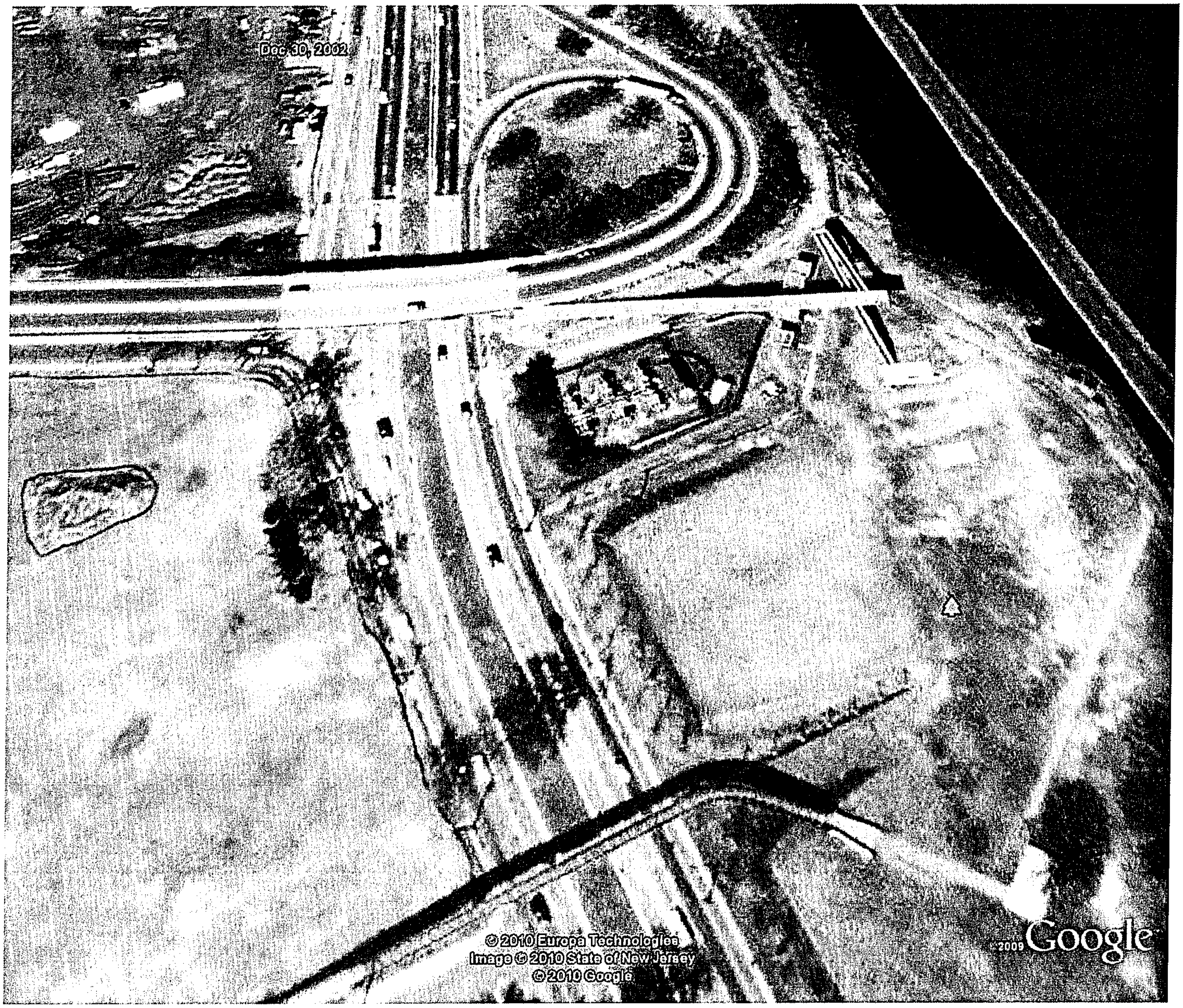
EXHIBIT A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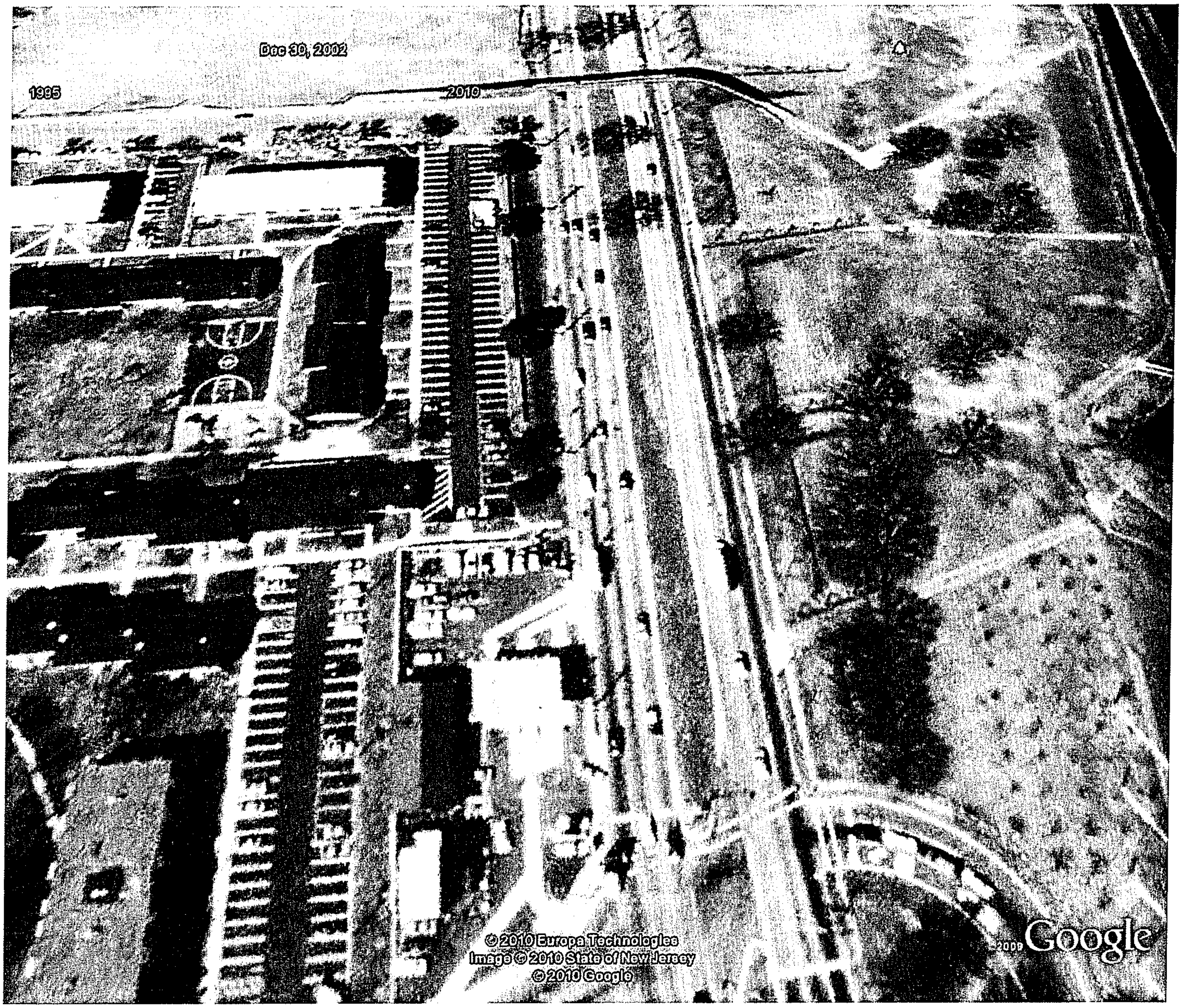
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EXHIBIT B

barrels on page 5.
A Okay. I'm on "J" now.
Q Let me see if I can find that for you.
A I see it.
Q I'm looking for the symbol. Is that the "J"?
A For the barrels, yes.
Q Yeah. So you wrote in four barrels. Correct?
A Yes, sir.
Q That's what you saw. Right?
A Yes.
Q And were all the barrels off the roadway?
A Yes.
Q Do you know the purpose of the barrels at that time? In other words, what was the -- do you have any idea why they were there?
A There was construction work going on in that area.
Q Do you know what kind of construction?
A No, sir.
Q Do you know if there was any construction that would impede the path of the pedestrian crossing the highway?

A Not to my knowledge at that time, no.
Q And you didn't see any construction vehicles in the area. Right?
A No, sir.
Q Was this the beginning of the construction that was taking place on Route 18, if you know?
A I -- I believe that there was some construction also going on near Boyd Park area, also, by the intersection, but I don't remember exactly where.
Q Could you be more specific? What do you mean by -- where?
You didn't record it in your diagram. Correct?
A No, I didn't report in my diagram, no, because I don't believe it was in the area of the roadway or otherwise I would have made a notation of it.
Q So not in the area of the scene of the accident. Correct?
A No, not in that area, no, no.
Q Now, if we continue on with your report, none of the witnesses stated that they saw Mr. Boswell leave the Boyd Park side of the road

before he went into the roadway. Is that correct?
A Yes.
Q Yes, that's correct?
A Yes, that's correct.
Q And did you ever ask Officer Feaster if he saw him leave the park area and cross the road or attempt to cross the road?
A Well, Officer Feaster did not state to me that he observed that, no.
Q Now, did Officer Feaster tell you that he had had that prior confrontation or exchange with Mr. Boswell?
MS. CLEAVER: Objection to form.
A Yes, he -- when -- he did speak to me about it, yes.
Q Now, was that at the scene or later?
A We discussed it at the scene after we secured the scene.
Q Now, is it -- but that was certainly after Mr. Boswell left the scene. Correct?
A After Mr. Boswell left the scene, sir? Yes.
Q Yeah.
If you take a look at 2 of 26 where you list Mr. Boswell. Okay. It's page 2.

A Yeah, it's just finding it.
MS. CLEAVER: Is it one of these two pages.
A Oh, I'm sorry, are you referring to -- oh, I'm sorry. Okay.
Q Yeah, 2 is, like, in the beginning.
A Okay. Yes, go ahead.
Q Now, block 67, first of all, you've marked off "pedestrian." Correct?
A Yes.
Q And then you list "Michael Boswell"?
A Yes.
Q And where did you get that information from?
A Officer Feaster like I previously said.
Q And then on "address" you put "homeless."
A Yes.
Q Where did you get that from?
A When I interviewed his brother at the hospital, Lee Boswell, he stated to me at that time that Michael was homeless.
Q Okay. And so you didn't -- when did you have that interview at the hospital?
A After we cleared -- secured and cleared

the scene I went to the hospital to check on Mr. Boswell's condition.

Q That morning?

A Yes, same morning, yes.

And I couldn't speak to him, of course, but his brother and other family members were there. So I --

Q And they informed you that he was homeless?

A Yes, his brother did, yes.

Q Okay. And is that how you got the date of birth?

A The date of birth I got from -- I received the date of birth from Officer Feaster.

Q Do you know where he got that from?

A He got that from Michael Boswell.

Q Okay. And what about the color of his eyes, do you know where you got that information from?

A Color of his -- the color of his eyes, I just -- I just put down -- I figured --

Q Did you -- so the answer is you don't remember or you don't know?

A I don't recall where I got that from, no.

Q Okay. Now, did Officer Feaster indicate to you that he had already given Boswell two summonses or at least had written out two summonses?

A Yes, he did.

Q And did he offer to you Boswell's address?

A Yes, he did.

Q And why didn't you put that down there?

A Because when I spoke with his brother, his brother told me he was homeless.

Q Okay. But you would have gotten the information from Officer Feaster before you met with the brother. Correct?

A Yes; but it turned out not to be correct.

Q How do you know that?

A Because his brother told me.

Q Well, where did -- do you know where Officer Feaster got a home address?

A I don't know how he ascertained that address, no.

Q If I mentioned to you 5 Elm Row, does that ring a bell at all?

A No, sir.

Q Do you know where 5 Elm Row is?

A Yes.

Q Where is it?

A Couple blocks over.

Q It's right around the corner?

A Yes.

Q And you've been an officer for how many years in New Brunswick, 20 some years?

A Twenty-five years.

Q So you're familiar with Elm Row?

A Yes.

Q And are you familiar with that address, 5 Elm Row?

A Not really, just pass it.

Q Doesn't mean anything to you?

A 5 Elm Row?

Q Nothing?

MS. CLEAVER: Objection. Asked and answered.

Q Doesn't mean anything to you?

MR. DUMSER: He's just shaking his head no.

A No.

Q Well, if I told you that that's a mail drop, did you know that?

A No.

Q Okay. Did you ever question Officer Feaster as to the physical condition of Mr. Boswell when he was in his presence before the accident?

A No.

Q If you go to page 13 of your report.

A Okay.

Q You with me?

A Yes, page 13.

Q The first paragraph, the last sentence says: "At this time pedestrian remains on life support"?

A Yes.

Q Is this something that you found out at the scene or after you went to the hospital?

A That was just before I completed my report.

Q Okay. And, I'm sorry, when did you complete your report?

A It was some time after September 9th. I will tell you.

Yes, some time after September 9th, after I found out that Mr. Boswell was still on life support at Robert Wood Johnson Hospital.

Q What are you referring to to refresh your --